Nos. 01-1244 and 01-1352

In the Supreme Court of the United States

JOSEPH SCHEIDLER, ET AL., PETITIONERS

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., ET AL.

OPERATION RESCUE, PETITIONER

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., ET AL.

ON WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTIONS PRESENTED

The United States will address the following questions:

1. Whether the Hobbs Act, 18 U.S.C. 1951, prohibits acts or threats of physical violence that obstruct, delay, or affect interstate commerce but have no connection to either robbery or extortion.

2. Whether private litigants may obtain equitable relief in a civil RICO action under 18 U.S.C. 1964.

TABLE OF CONTENTS

Page

Interest of the United States 1
Statutory provisions involved 2
Statement 2
Summary of argument 6
Argument:

I. The Hobbs Act does not criminalize acts or threats of physical violence that are not linked to a planned or intended robbery or extortion 7
   A. The text of the Hobbs Act requires the prohibited physical violence to be in furtherance of a planned or intended robbery or extortion 8
   B. The Hobbs Act's history confirms that the Hobbs Act does not contain a free-standing prohibition on violence that obstructs, delays, or affects commerce 13
   C. Criminal liability has never been imposed under the Hobbs Act for violence independent of an intended robbery or extortion 18

II. RICO does not authorize a private cause of action for injunctive relief 19
   A. RICO's text and structure vest exclusive authority in the Attorney General to sue for equitable relief 19

Table of Contents—Continued: Page

B. A comparison with the antitrust laws shows that Congress did not create a private injunctive action 22
C. Policy considerations do not support a private right to injunctive relief under RICO 27
Conclusion 29

TABLE OF AUTHORITIES

Cases:

Agency Holding Corp. v. *Malley-Duff & Assoc.*, 483 U.S. 143 (1987) 26, 27
Bates v. *United States*, 522 U.S. 23 (1997) 13
California v. *American Stores Co.*, 495 U.S. 271 (1990) 23, 28
Califano v. *Yamasaki*, 442 U.S. 682 (1979) 24
Caminetti v. *United States*, 242 U.S. 470 (1917) 13
Carter v. *United States*, 530 U.S. 255 (2000) 13
Chickasaw Nation v. *United States*, 534 U.S. 84 (2001) 13
D.R. Wilder Mfg. Co. v. *Corn Prods. Ref. Co.*, 236 U.S. 165 (1915) 23, 24, 28
Evans v. *United States*, 504 U.S. 255 (1992) 14
FCC v. *Pacifica Found.*, 438 U.S. 726 (1978) 17
Farmers' & Mechs. Nat'l Bank v. *Dearing*, 91 U.S. 29 (1875) 24
Geddes v. *Anaconda Copper Mining Co.*, 254 U.S. 590 (1921) 23

Cases—Continued: Page

General Inv. Co. v. *Lake Shore & Mich. S. Ry.*, 260 U.S. 261 (1922) 23, 24
Holmes v. *Securities Investor Prot. Corp.*, 503 U.S. 258 (1992) 23, 25, 26
Laime v. *United States Tr.*, 540 U.S. 526 (2004) 13
Minnesota v. *Northern Sec. Co.*, 194 U.S. 48 (1904) 23
Mitchell v. *Robert DeMario Jewelry, Inc.*, 361 U.S. 288 (1960) 24
Muniz v. *Hoffman*, 422 U.S. 468 (1975) 17
National Org. for Women, Inc. v. *Scheidler*, 510 U.S. 249 (1994) 2, 3
Paine Lumber Co. v. *Neal*, 244 U.S. 459 (1917) 23
Pennsylvania Dep't of Corrs. v. *Yeskey*, 524 U.S. 206 (1998) 13
Pfizer Inc. v. *India*, 434 U.S. 308 (1978) 23
Porter v. *Warner Holding, Co.*, 328 U.S. 395 (1946) 24
Religious Tech. Ctr. v. *Wollersheim*, 796 F.2d 1076 (9th Cir. 1986), cert. denied, 479 U.S. 1103 (1987) 21, 27
Russello v. *United States*, 464 U.S. 16 (1984) 28
Salinas v. *United States*, 522 U.S. 52 (1997) 13
Scheidler v. *National Org. for Women, Inc.*, 537 U.S. 393 (2003) 1, 2, 3, 4, 5, 9, 10, 14, 16

Cases—Continued: Page

Sedima, S.P.R.I. v. *Imrex Co.*, 473 U.S. 479 (1985) 20, 26
Stirone v. *United States*, 361 U.S. 212 (1960) 9
Texas Indus., Inc. v. *Radcliff Materials, Inc.*, 451 U.S. 630 (1981) 23
Trainmen v. *Baltimore & Ohio R.R.*, 331 U.S. 519 (1947) 13
United States v. *Bonanno*, 879 F.2d 20 (2d Cir. 1989) 20
United States v. *Cooper Corp.*, 312 U.S. 600 (1941) 24
United States v. *Culbert*, 435 U.S. 371 (1978) 9, 14, 15, 16
United States v. *Dworkin*, 855 F.2d 12 (1st Cir. 1988) 11
United States v. *Enmons*, 410 U.S. 396 (1973) 10, 13, 14, 19
United States v. *Franks*, 511 F.2d 25 (6th Cir.), cert. denied, 422 U.S. 1042 and 1048 (1975) 11, 19
United States v. *Philip Morris USA, Inc.*, 396 F.3d 1190 (D.C. Cir. 2005), petition for cert. pending, No. 05-92 (filed July 18, 2005) 25
United States v. *Teamsters*, 315 U.S. 521 (1942) 14
United States v. *Turkette*, 452 U.S. 576 (1981) 28
United States v. *Wells*, 519 U.S. 482 (1997) 17
United States v. *Yankowski*, 184 F.3d 1071 (9th Cir. 1999) 19

Cases—Continued: Page

Whitman v. *American Trucking Ass'n*, 531 U.S. 457 (2001) 13

Statutes:

Act of June 25, 1948, ch. 645, 62 Stat. 683:
§ 1:
Pt. I:
§ 1951:
62 Stat. 793 ..... 6, 17
62 Stat. 793-794 ..... 16, 17
§ 21, 62 Stat. 866 17

Anti-Racketeering Act of 1934, ch. 569, 48 Stat. 979:
§ 2, 48 Stat. 979 ..... 5, 14
§ 2(a), 48 Stat. 980 14
§ 2(b), 48 Stat. 980 14
§ 2(c), 48 Stat. 980 ..... 12, 14

Clayton Act, 15 U.S.C. 15 *et seq.*:
§ 4, 15 U.S.C. 15(a) 7
§ 16, 15 U.S.C. 26 ..... 7, 23, 25

Freedom of Access to Clinic Entrances Act of 1994, Pub. L. No. 103-259, § 3, 108 Stat. 694 28

Hobbs Anti-Racketeering Act of 1946, ch. 537, 60 Stat. 420 ..... 5, 12, 14
§ 1, 60 Stat. 420 15
§ 2, 60 Stat. 420 15
§ 3, 60 Stat. 420 15
§ 4, 60 Stat. 420 15
§ 5, 60 Stat. 420 15

Statutes—Continued: Page

Organized Crime Control Act of 1990, Pub. L. No. 91-452, § 904(a), 84 Stat. 947 27
Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961 *et seq.*:
18 U.S.C. 1962(c) 3
18 U.S.C. 1964 ..... 1, 2, 6, 7, 19, 25, 27
18 U.S.C. 1964(a) 6, 7, 19, 20, 21, 22, 24, 25
18 U.S.C. 1964(b) 6, 19, 20, 21, 22, 25
18 U.S.C. 1964(c) 2, 3, 6, 7, 20, 21, 22, 25
Sherman Act, ch. 647, 26 Stat. 209 6
§ 4, 26 Stat. 209-210 ..... 23, 25
§ 7, 26 Stat. 210 23
Travel Act, 18 U.S.C. 1952 3
18 U.S.C. 248(a) 28
18 U.S.C. 248(c)(1)(B) 28
18 U.S.C. 1951 ..... 1, 2, 3, 5, 6, 18
18 U.S.C. 1951(a) 5, 7, 8, 9, 13
18 U.S.C. 1951(b)(1) 9
18 U.S.C. 1951(b)(2) 9

Miscellaneous:

89 Cong. Rec. 3217 (1943) 16
91 Cong. Rec. (1945):
p. 11,900 14
p. 11,912 16
116 Cong. Rec. (1970):
p. 27,739 26
p. 35,227 26

Miscellaneous—Continued: Page

p. 35,228 26
p. 35,346 26
Department of Justice:
Criminal Resource Manual (1997) 19
Handbook for Prosecution of Racketeers (Apr. 30, 1965) 18
10 *United States Attorney's Manual* (May 8, 1984) 18
H.R. Rep. No. 238, 79th Cong., 1st Sess. (1945) 15
H.R. Rep. No. 304, 80th Cong., 1st Sess. (1947) 6, 16, 17
S. Rep. No. 1516, 79th Cong., 2d Sess. (1946) ... 15, 16
S. Rep. No. 1620, 80th Cong., 2d Sess. (1948) 17
Herbert Wechsler et al., *The Treatment of Inchocte Crimes in the Model Penal Code of the American Law Institute: Attempt, Solicitation, and Conspiracy*, 61 Colum. L. Rev. 957 (1961) 11

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INTEREST OF THE UNITED STATES

This Court granted certiorari to review the court of appeals' decision, following this Court's ruling in *Scheidler* v. *National Organization for Women, Inc.*, 537 U.S. 393 (2003), to remand this case to the trial court to determine whether petitioners' four acts or threats of physical violence could constitute a violation of the Hobbs Anti-Racketeering Act (Hobbs Act), 18 U.S.C. 1951, or could support a nationwide injunction under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. 1964. The United States brings criminal prosecutions under the Hobbs Act as well as criminal and civil RICO cases that rely on Hobbs Act viola-

tions as RICO predicate acts. It has long been the view of the United States that the Hobbs Act criminalizes physical violence only when that conduct is in furtherance of an intended robbery or extortion. See pp. 18-19, *infra*. The RICO statute authorizes the Attorney General of the United States to bring civil suits for equitable relief. The court of appeals' holding that private civil RICO plaintiffs may also seek such relief could adversely affect the United States' ability to obtain equitable relief such as disgorgement when both private parties and the government seek such relief for the same conduct.

STATUTORY PROVISIONS INVOLVED

The relevant provisions of the Hobbs Act, 18 U.S.C. 1951, and RICO, 18 U.S.C. 1964, are set forth in an appendix to this brief. App., *infra*, 8a-10a.

STATEMENT

1. Petitioners are individuals and organizations engaged in pro-life and anti-abortion activities. Respondents are a national nonprofit organization that supports the legal availability of abortions and two clinics that provide medical services, including abortions. See *National Org. for Women, Inc. (NOW)* v. *Scheidler*, 510 U.S. 249, 252 (1994); *Scheidler* v. *NOW*, 537 U.S. 393, 397-398 (2003); 04-1244 Pet. App. 25a-26a. In 1986, respondents brought this RICO action under 18 U.S.C. 1964(c) against petitioners and other defendants alleging, *inter alia*, that they conspired to force the closing of health care clinics that perform abortions, and that they did so through a pattern of racketeering activity that included acts of extortion in violation of the Hobbs Act. In 1991, the district court dismissed the RICO claims for failure to allege that the predicate acts or the RICO enterprise were economically motivated. The court of appeals affirmed that ruling. This Court reversed and remanded, holding that RICO does not require proof that either the alleged racketeering enter-

prise or the predicate acts of racketeering had an economic motive. *NOW* v. *Scheidler*, 510 U.S. at 257.

2. After trial, the jury returned a verdict for respondents on their substantive RICO claims under Section 1962(c). The jury found that petitioners or persons associated with them had committed 21 violations of the Hobbs Act, 18 U.S.C. 1951; 25 violations of state extortion law; four acts or threats of physical violence to any person or property; 23 violations of the Travel Act, 18 U.S.C. 1952; and 23 attempts to commit one of those crimes. 04-1244 Pet. App. 191a. The jury awarded $31,455.64 to respondent Delaware Women's Health Organization and $54,471.28 to Summit Women's Health Organization. *Id.* at 149a. Those damages were trebled pursuant to 18 U.S.C. 1964(c). 04-1244 Pet. App. 163a n.10. The district court subsequently entered a nationwide injunction that enjoins petitioners, *inter alia*, from wrongfully interfering with the right of clinics to conduct their business. *Id.* at 165a-174a.

The Seventh Circuit affirmed, holding, *inter alia*, that private parties may obtain injunctive relief under RICO. 04-1244 Pet. App. 35a-43a. The court also concluded that petitioners' conduct constituted extortion under the Hobbs Act. The court concluded that a person can violate the Hobbs Act without seeking or receiving money or other property as long as there was a loss to, or interference with the rights of, the victim. *Id.* at 58a-59a.

This Court reversed, holding that petitioners did not obtain or attempt to obtain respondents' property and therefore had not committed extortion under the Hobbs Act. *Scheidler* v. *NOW*, 537 U.S. at 410. The Court also concluded that the jury's finding of predicate acts of violating state extortion laws and violating the Travel Act based on extortionate conduct could not be sustained because petitioners did not commit or attempt to commit extortion. *Ibid.* The Court further explained that "[b]ecause all of the predicate acts sup-

porting the jury's finding of a RICO violation must be reversed, the judgment that petitioners violated RICO must be reversed," and accordingly that "[w]ithout an underlying RICO violation, the injunction issued * * * must necessarily be vacated." *Id.* at 411. The Court therefore did not address "whether a private plaintiff in a civil RICO action is entitled to injunctive relief under 18 U.S.C. § 1964." 537 U.S. at 411.

3. On remand to the court of appeals, respondents argued that the jury's RICO verdict could be sustained based on the four predicate acts consisting of acts or threats of physical violence to any person or property. The court of appeals concluded that this Court in *Scheidler* v. *NOW*, *supra*, had not addressed that issue and that it had not been within the scope of the petition before the Court. The court of appeals then remanded the case to the district court to determine whether the four predicate acts involving acts or threats of physical violence were sufficient to support the nationwide injunction that the trial court had imposed. 04-1244 Pet. App. 28a. In so doing, the court of appeals observed that the trial court "may find it necessary" to decide if the language of the Hobbs Act imposing criminal penalties on any person who "'commits or threatens physical violence to any person or property' constitutes an independent ground for violating the Hobbs Act or, rather, relates back to the grounds of robbery or extortion." *Id.* at 29a.

In denying rehearing, the court of appeals reaffirmed its view that the remand to the district court was appropriate, noting that it had "not, at this point, ruled either implicitly or explicitly on the Hobbs Act issue, for reasons of judicial economy and restraint." 04-1244 Pet. App. 6a-7a. The court of appeals nonetheless suggested that the physical violence clause of the Hobbs Act sets forth an independent, free-standing offense that does not relate back to a robbery or an extortion. *Id.* at 8a-15a.

Judge Manion, joined by Judge Kanne, dissented from the denial of rehearing. 04-1244 Pet. App. 17a-24a. He expressed the view that the court of appeals' order remanding the case to the trial court "directly conflicts with the Supreme Court's opinion" in *Scheidler* v. *NOW*, *supra*, "rests on an impermissible reading of the Hobbs Act," and "unnecessarily revives a case that is already more than eighteen years old." *Id.* at 19a.

SUMMARY OF ARGUMENT

I. The Hobbs Act does not criminalize acts or threats of physical violence independent of a planned or intended robbery or extortion.

A. The text of the Hobbs Act, 18 U.S.C. 1951(a), which imposes penalties on any person who "commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section," refers back to the robbery, extortion, attempts, and conspiracies that are made criminal offenses under Section 1951(a). The "plan or purpose to do anything in violation of this section" can only refer to robbery and extortion offenses that are defined in the first clause of the statute, together with related attempts and conspiracies. Physical violence without a connection to a planned or intended robbery or extortion is not prohibited under the plain language of the Hobbs Act.

B. The history of Section 1951(a) compels the conclusion that the statute should be read according to its clear text. The Anti-Racketeering Act of 1934, which was the predecessor to the Hobbs Act, did not contain a free-standing prohibition against physical violence in connection with interstate commerce. Ch. 569, § 2, 48 Stat. 979-980. Similarly, the Hobbs Act as originally enacted in 1946 explicitly tied the prohibited physical violence to robbery or extortion. Pub. L. No. 486, ch. 537, 60 Stat. 420. Congress did not intend to create a new stand-alone crime of physical violence when it

passed Section 1951 as part of the 1948 revision of the Criminal Code. Act of June 25, 1948, ch. 645, Pt. I, § 1951, 62 Stat. 793; H.R. Rep. No. 304, 80th Cong., 1st Sess. A131 (1947). Rather, Congress continued to use language that reached physical violence only when in furtherance of a plan or purpose to commit the offense of robbery or extortion or a related attempt or conspiracy.

C. It has been the longstanding view of the United States that the Hobbs Act does not criminalize physical violence independent of a planned or intended robbery or extortion. In the two aberrant prosecutions that departed from that view, the courts rejected the theory of the prosecution. In the 55 years of the Hobbs Act's existence, it appears that no defendant has ever been convicted under the Hobbs Act for physical violence that did not relate to a planned robbery or extortion.

II. RICO does not authorize private parties to seek injunctive relief.

A. Section 1964(a) confers jurisdiction on federal district courts to prevent and restrain RICO violations by granting equitable relief, and Section 1964(b) authorizes only the Attorney General to bring equitable actions and to obtain temporary equitable relief. Section 1964(c) authorizes private parties to sue for treble damages and attorney's fees, but does not authorize private parties to seek any other relief. The structure of those provisions demonstrates that Congress intended to vest the Attorney General with the exclusive authority to bring suit for equitable relief.

B. Congress's intent to withhold from private litigants the right to seek injunctive relief is confirmed by the treatment of the same issue under the antitrust laws. The Sherman Act, 26 Stat. 209-210, created a public equitable action and a private treble damages action. This Court interpreted that Act to foreclose a private injunctive action. Because Section 1964

tracks the language and structure of the Sherman Act in that respect, Congress is presumed to intend that Section 1964 similarly be interpreted not to authorize a private action for injunctive relief.

That presumption is strengthened by comparison of RICO with the Clayton Act. Section 4 of the Clayton Act (15 U.S.C. 15(a)) carries forward the Sherman Act's treble damages provision, but Congress added a new provision, Section 16 of the Clayton Act (15 U.S.C. 26), that expressly authorizes a private action for injunctive relief. The fact that Congress used Section 4 of the Clayton Act as the template for RICO's treble damages provision, 18 U.S.C. 1964(c), without also including a counterpart to Section 16 of the Clayton Act, compels the conclusion that Congress intended no such right under RICO.

C. RICO's purposes are fully consistent with the absence of a private right to seek injunctive relief. Congress authorized courts to grant the full range of equitable relief in civil RICO actions, including such dramatic steps as corporate reorganization and dissolution. 18 U.S.C. 1964(a). Congress logically vested the Attorney General with the exclusive authority to seek such relief.

ARGUMENT

I. THE HOBBS ACT DOES NOT CRIMINALIZE ACTS OR THREATS OF PHYSICAL VIOLENCE THAT ARE NOT LINKED TO A PLANNED OR INTENDED ROBBERY OR EXTORTION

The Hobbs Act imposes criminal punishment on anyone who "in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section." 18 U.S.C. 1951(a). The text and

history of that provision show that the Hobbs Act does not proscribe acts or threats of physical violence except to further a planned or intended robbery or extortion. That conclusion accords with the longstanding view of the United States.

A. The Text Of The Hobbs Act Requires The Prohibited Physical Violence To Be In Furtherance Of A Planned Or Intended Robbery Or Extortion

1. Section 1951(a)'s introductory clause imposes criminal penalties on any person who "in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, *by robbery or extortion or attempts or conspires so to do.*" 18 U.S.C. 1951(a) (emphasis added). No offense is committed under that clause unless the person engages in a robbery or an extortion, or attempts or conspires to commit one of those offenses.

The next clause of Section 1951(a) imposes criminal penalties on any person who "commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section." 18 U.S.C. 1951(a). That text unambiguously refers to the criminal prohibitions in the prior clause. The physical violence clause thus requires that the defendant interfere with commerce by threatening or committing physical violence in furtherance of a robbery or extortion, an attempted robbery or extortion, or a conspiracy to commit robbery or extortion.

In the court of appeals' view, the statute may be read to proscribe acts or threats of violence that are unconnected to any actual or planned robbery or extortion. 04-1244 Pet. App. 8a, 12a-15a. That conclusion, however, ignores the statute's clear requirement that the defendant engage in acts or threats of physical violence "in furtherance of a plan or purpose to do anything *in violation of this section.*" As discussed, the Hobbs Act in the preceding clause prohibits only

robbery and extortion, and related attempts and conspiracies. The Act accordingly cannot be read to contain a free-standing and independent offense of physical violence that obstructs, delays, or affects commerce.

2. As the court of appeals observed (04-1244 Pet. App. 9a), the Court in *Stirone* v. *United States*, 361 U.S. 212 (1960), described the Hobbs Act as "speak[ing] in broad language, manifesting a purpose to use all the constitutional power Congress has to punish interference with interstate commerce by extortion, robbery *or physical violence*." *Id.* at 215 (emphasis added). The Court made that statement, however, only in the context of discussing the requisite degree of interference with interstate commerce. See *Scheidler* v. *NOW*, 537 U.S. at 408-409. Thus, the reference to "physical violence" in the quoted passage from *Stirone* is properly read as a shorthand reference to the entirety of the statutory text in the latter portion of 18 U.S.C. 1951(a), which makes clear that the "physical violence" targets by the Hobbs Act must be "in furtherance of a plan or purpose to do anything in violation of this section" – *i.e.*, in furtherance of robbery or extortion or an attempt or conspiracy to commit robbery or extortion. Indeed, the Court elsewhere has indicated its understanding that the Hobbs Act prohibits only those acts that are linked to robbery or extortion. See *Scheidler* v. *NOW*, 537 U.S. at 407 (explaining that Congress in the Hobbs Act "prohibited interference with commerce by 'robbery or extortion'"); *United States* v. *Culbert*, 435 U.S. 371, 377 (1978) (describing Act's "specific prohibitions against robbery and extortion").

To read the Hobbs Act as containing an independent prohibition against acts or threats of violence in connection with interstate commerce would effectively overrule two of this Court's decisions interpreting the Hobbs Act, *Scheidler* v. *NOW*, *supra*, and *United States* v. *Enmons*, 410 U.S. 396 (1973). Those decisions involved the meaning of "extortion"

under the Hobbs Act, which requires that the defendant both "obtain[]" property and that the acts or threats of violence be "wrongful." 18 U.S.C. 1951(b)(2); cf. 18 U.S.C. 1951(b)(1) (defining "robbery" to mean the "unlawful taking or obtaining of personal property"). This Court in *Scheidler* v. *NOW*, 537 U.S. at 405, held that petitioners did not "obtain" anything by their acts and threats of violence in their efforts to shut down the abortion clinics. The Court relied in part on the fact that Congress in the Hobbs Act omitted the New York crime of coercion, which does not require defendants to obtain anything but criminalizes violence in their efforts to alter another's conduct. *Id.* at 405-406. Reading the Hobbs Act to criminalize petitioners' violence independent of extortion (and therefore independent of the Act's "obtaining" requirement) would render the Court's holding in *Scheidler* v. *NOW* a dead letter.

The same is true of this Court's decision in *United States* v. *Enmons*, where the Court held that labor union members and officials who committed acts of violence did not commit extortion under the Hobbs Act because their violence in furtherance of legitimate labor activities was not "wrongful." 410 U.S. at 399. In that case, the defendants conspired to obtain for striking employees higher wages and other employment benefits from an employer, a utility company. In furtherance of that conspiracy, the defendant fired high-powered rifles at three company transformers, drained oil from a company transformer, and blew up a company transformer substation. *Id.* at 398. Were the Hobbs Act to penalize violence that affected interstate commerce independent of extortion and its wrongfulness element, the violent activities in furtherance of higher wages and benefits at issue in *Enmons* would have constituted Hobbs Act violations. The highly anomalous results produced by such an interpretation of the Act strongly

suggest that the Hobbs Act does not criminalize conduct that is not linked to robbery or extortion.

3. The court of appeals also suggested that respondents' reading of the Hobbs Act may be necessary to give the physical violence clause independent meaning. The court of appeals reasoned that physical violence in furtherance of a plan or purpose to commit robbery or extortion would presumably "already fall within the definitions of robbery, extortion, or attempts or conspiracies to rob or extort." 04-1244 Pet. App. 14a. But Congress could rationally have enacted the physical violence clause to serve a function similar to that of the inchoate crimes of attempt and conspiracy, *i.e.* "as a basis for preventive intervention by the agencies of law enforcement and for the corrective treatment of persons who reveal that they are disposed to criminality." Herbert Wechsler et al., *The Treatment of Inchoate Crimes in the Model Penal Code of the American Law Institute: Attempt, Solicitation, and Conspiracy*, 61 Colum. L. Rev. 957, 959 (1961). Viewed in that light, the physical violence clause "reach[es] physical violence designed to culminate in extortion [or robbery], even if the scheme aborts prior to extortion [or robbery]." *United States* v. *Franks*, 511 F.2d 25, 31 (6th Cir.), cert. denied, 422 U.S. 1042 (1975).

The clause also may be read to cover physical violence taken in furtherance of robbery or extortion, but where the government has insufficient proof of an attempt or a conspiracy. For instance, a defendant may commit or threaten physical violence to further an extortion conspiracy but the government may lack sufficient proof that the defendant agreed to join the conspiracy. Similarly, Congress may have wanted to reach a defendant who threatened physical violence to further an uncompleted robbery or extortion but there is doubt whether the defendant had yet embarked upon an attempt. Cf. *United States* v. *Dworken*, 855 F.2d 12, 16 (1st Cir. 1988)

("The invariably elusive nature of what constitutes an 'attempt' has long been the subject of judicial chagrin.").

The court of appeals acknowledged that the physical violence clause might cover some conduct that was not already covered under the preceding clause of the Act, but the court thought it "unlikely that Congress included the 'violence' language to capture such a tiny set of academic hypotheticals." 04-1244 Pet. App. 14a. Congress presumably was concerned, however, with ensuring complete coverage under the Act, particularly where robbery or extortion plans turned violent. As the court of appeals acknowledged, when initially enacted in 1946, the Hobbs Act "explicitly linked the 'acts of physical violence' clause to the prohibition on robbery and extortion." *Id.* at 15a (citing Pub. L. No. 486, 60 Stat. 420 (1946)). The original Act's physical violence clause thus applied to "academic hypotheticals," such as a defendant who threatens or agrees to use physical force to commit a robbery even though such conduct was separately prohibited under the statute's prohibitions of attempts and conspiracies. See pp. 14-15, *infra*.

Congress also employed a similar overlapping phrase that criminalized physical violence in furtherance of an extortion or exaction of property in the Hobbs Act's predecessor, the Anti-Racketeering Act of 1934. Ch. 569, § 2(c), 48 Stat. 979-980; see pp. 13-14, *infra*. Accordingly, the history of the statute shows that Congress separately prohibited physical violence in furtherance of other prohibited acts in order to ensure that the statute captured dangerous conduct even when the underlying substantive offense was not yet complete.

In any event, even were the physical violence clause, as a practical matter, largely superfluous, that fact would not justify the creation of an offense that is not supported by any language in the Hobbs Act. As this Court has explained, "[s]urplusage does not always produce ambiguity and [the

Court's] preference for avoiding surplusage constructions is not absolute." *Lamie* v. *United States Trs.*, 540 U.S. 526, 536 (2004). If the only way to give meaning to such surplusage would be to contradict the plain meaning of the language that Congress used in the statute, the correct course is to "prefer the plain meaning." *Ibid*; accord *Chickasaw Nation* v. *United States*, 534 U.S. 84, 94 (2001).[1]

B. The Hobbs Act's History Confirms That The Hobbs Act Does Not Contain A Free-standing Prohibition On Violence That Obstructs, Delays, Or Affects Commerce

The history of the Hobbs Act reflects Congress's intent to proscribe physical violence in connection with interstate commerce only when connected to an actual or intended robbery or extortion. The statutory antecedents to Section 1951(a) expressly linked the prohibited physical violence to robbery or extortion, and there is no evidence that Congress, when it recodified that prohibition in Section 1951(a) in 1948, intended to create a wholly independent prohibition against violence.

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[1] The same principle precludes any reliance on the title of the Hobbs Act, "Interference with commerce by threats or violence." A statutory title is relevant only to resolve an ambiguous phrase or word in the statute itself. *Carter* v. *United States*, 530 U.S. 255, 267 (2000); *Pennsylvania Dep't of Corrs.* v. *Yeskey*, 524 U.S. 206, 212 (1998); *Trainmen* v. *Baltimore & Ohio R.R.*, 331 U.S. 519, 528-529 (1947). A clear statutory text thus "eliminates the interpretive role of the title." *Whitman* v. *American Trucking Ass'ns*, 531 U.S. 457, 484 (2001); accord *Caminetti* v. *United States*, 242 U.S. 470, 490 (1917). Similarly, because the plain text of the Hobbs Act criminalizes violence only when connected to a robbery or extortion, the Court need not resort to the rule of lenity or other principles of statutory construction that might otherwise support a narrow reading of the Hobbs Act. See, *e.g.*, *Salinas* v. *United States*, 522 U.S. 52, 66 (1997); *Bates* v. *United States*, 522 U.S. 23, 32 (1997); cf. *United States* v. *Enmons*, 410 U.S. at 411 (invoking rule of lenity and need to avoid "an unprecedented incursion into the criminal jurisdiction of the States" on the assumption that "the language and history of the Act were less clear").

1. The Hobbs Act's predecessor is Section 2 of the Anti-Racketeering Act of 1934. *Scheidler* v. *NOW*, 537 U.S. at 406; *Evans* v. *United States*, 504 U.S. 255, 261 (1992); *United States* v. *Culbert*, 435 U.S. at 374; *United States* v. *Enmons*, 410 U.S. at 401. The 1934 Act contained no free-standing prohibition on physical violence in connection with interstate commerce. Rather, Section 2(c) of that Act imposed criminal penalties on any person who, in connection with interstate commerce, "[c]ommits or threatens to commit an act of physical violence or physical injury to a person or property *in furtherance of a plan or purpose to violate sections (a) or (b)*." 48 Stat. 980 (emphasis added). Sections 2(a) and (b) in turn applied to any person who engaged in extortion or who, by force, violence, or coercion, obtained or attempted to obtain the payment of money or other valuable consideration "not including * * * the payment of wages by a bona-fide employer to a bona-fide employee." 48 Stat. 980. Accordingly, the 1934 Act made it a crime to engage in violence that affected interstate commerce, but only when the defendant intended to violate the specific prohibitions in the Act on extortion and the exaction of property that did not qualify under the wage exception.

2. In 1946, Congress passed the Hobbs Act as an amendment to the 1934 Act. Pub. L. No. 486, ch. 537, 60 Stat. 420; *Evans* v. *United States*, 504 U.S. at 261. The "narrow purpose" of the Hobbs Act was to overrule this Court's holding in *United States* v. *Teamsters*, 315 U.S. 521 (1942), that the wage exception in the 1934 Act covered union members who used violence to exact wage payments for superfluous and unwanted services. *United States* v. *Enmons*, 410 U.S. at 402; *Scheidler* v. *NOW*, 537 U.S. at 407; *Evans* v. *United States*, 504 U.S. at 262; see also 91 Cong. Rec. 11,900 (1945) (statement of Rep. Hancock) ("This bill is designed simply to prevent both union members and nonunion people from making

use of robbery and extortion under the guise of obtaining wages in the obstruction of interstate commerce. That is all it does."). Thus, "[t]he bill that eventually became the Hobbs Act deleted the exception on which the Court had relied in *Teamsters* and substituted specific prohibitions against robbery and extortion for the Anti-Racketeering Act's language." *United States* v. *Culbert*, 435 U.S. at 377.

Accordingly, when Congress passed the Hobbs Act in 1946, it did not create a novel federal crime of physical violence. Section 1 of the Hobbs Act defined the terms "commerce," "robbery," and "extortion." 60 Stat. 420. Section 2 provided that "[w]hoever in any way or degree, obstructs, delays, or affects commerce, or the movement of any article or commodity in commerce, *by robbery or extortion* shall be guilty of a felony." *Ibid.* (emphasis added). The succeeding sections then set forth separate criminal prohibitions covering conspiracies, attempts, and violence in furtherance of a robbery or extortion. Thus, Section 3 applied to "[w]hoever conspires with another or with others, or acts in concert with another or with others to do anything in violation of section 2," and Section 4 applied to "[w]hoever attempts or participates in an attempt to do anything in violation of section 2." *Ibid.* As particularly relevant here, Section 5 applied to "[w]hoever commits or threatens physical violence to any person or property *in furtherance of a plan or purpose to do anything in violation of section 2*." *Ibid.* (emphasis added). The Hobbs Act thus unambiguously linked the prohibitions on physical violence to the robbery or extortion that Congress had criminalized under Section 2.

Not surprisingly, there is no mention in the Hobbs Act's history of an intent to create a new federal crime of physical violence in connection with interstate commerce. To the contrary, the history reflects congressional intent to proscribe only robbery and extortion. See, *e.g.*, H.R. Rep. No. 238, 79th

Cong., 1st Sess. 9 (1945) (purpose of the bill is "to prevent anyone from obstructing, delaying, or affecting commerce, or the movement of any article or commodity in commerce *by robbery or extortion* as defined in the bill") (emphasis added); S. Rep. No. 1516, 79th Cong., 2d Sess. 1 (1946) (same). As the sponsor of the Act, Representative Hobbs, concisely described the bill that became the Hobbs Act:

> This bill is grounded on the bedrock principle that crime is crime, no matter who commits it; and that robbery is robbery and extortion extortion, whether or not the perpetrator has a union card. It covers whoever in any way or degree interferes with interstate or foreign commerce *by robbery or extortion*.

89 Cong. Rec. 3217 (1943) (emphasis added).

The Court has observed that Congress intended that the Hobbs Act "be clear about what conduct was prohibited." *Scheidler* v. *NOW*, 537 U.S. at 407 (quoting *United States* v. *Culbert*, 435 U.S. at 378). Toward that end, Congress proscribed extortion and robbery since "[e]verybody knows what they mean." *Id.* at 407 n.12 (quoting 91 Cong. Rec. at 11,912 (statement of Rep. Hobbs)). The Hobbs Act likewise "carefully defines its key terms, such as 'robbery,' 'extortion,' and 'commerce.'" *Id.* at 407 (quoting *United States* v. *Culbert*, 435 U.S. at 373). Given the precision with which Congress drafted the Act, "[i]t is inconceivable that, at the same time Congress was so concerned about clearly defining the acts prohibited under the bill," *United States* v. *Culbert*, 435 U.S. at 378, it intended to create a novel crime of physical violence.

3. As part of Congress's 1948 revision of the Criminal Code, the Hobbs Act was revised and codified as Section 1951 of Title 18. Act of June 25, 1948, ch. 645, Pt. I, § 1951, 62 Stat. 793-794. As the court of appeals acknowledged, the 1948 changes to the Hobbs Act "were intended to be formal, stylis-

tic changes." 04-1244 Pet. App. 15a. That point is made explicit by the Reviser's Notes accompanying the 1948 revision, which were intended to "explain[] in detail the revision of each section of the Federal Criminal laws." H.R. Rep. No. 304, 80th Cong., 1st Sess., A1 (1947); *Muniz* v. *Hoffman*, 422 U.S. 454, 469 (1975) ("Revisions in the law were carefully explained in a series of Reviser's Notes printed in the House Report.") (footnote omitted).

As discussed, Congress passed the Hobbs Act as an amendment to the Anti-Racketeering Act of 1934. See p. 14, *supra*. In the 1948 revision of the Criminal Code, Congress repealed the 1934 Act, and revised the Hobbs Act as Section 1951. 62 Stat. 793-794 (enactment of Section 1951), 866 (repeal of Act of June 18, 1934, ch. 569, 48 Stat. 979, 980). The Reviser's Notes thus explain that Section 1951 consolidated the 1934 Act "with changes in phraseology and arrangement necessary to effect consolidation." H.R. Rep. No. 304, *supra*, at A131.

That history is consistent with Congress's general intent in the 1948 revision of the Criminal Code. "[A]s the Senate Report of that legislation made clear, '[t]he original intent of Congress is preserved'" in the 1948 revision. *Muniz* v. *Hoffman*, 422 U.S. at 469 (quoting S. Rep. No. 1620, 80th Cong., 2d Sess. 1 (1948)). Similarly, "[t]he House Report stated that '[r]evision * * * meant the substitution of plain language for awkward terms, reconciliation of conflicting laws, omission of superseded sections, and consolidation of similar provisions.'" *Ibid.* (quoting H.R. Rep. No. 304, *supra*, at 2). Based on that history, this Court has refused to read the 1948 revisions to the Criminal Code as bringing about significant changes without an expression of congressional intent in the text itself. *FCC* v. *Pacifica Found.*, 438 U.S. 726, 738 (1978); *Muniz* v. *Hoffman*, 422 U.S. at 468-469; cf. *United States* v. *Wells*, 519 U.S. 482, 497 (1997) (Reviser's Notes may

not "muddy the ostensibly unambiguous provision of the statute as enacted by Congress"). The history of Section 1951 therefore confirms the conclusion compelled by the plain text: the prohibited physical violence must be linked to an intended robbery or extortion.

C. Criminal Liability Has Never Been Imposed Under The Hobbs Act For Violence Independent Of An Intended Robbery Or Extortion

In light of the text and history of the Hobbs Act, it has long been the view of the United States that the Hobbs Act proscribes physical violence only when linked to a planned or intended robbery or extortion. In examining the bill that became the Hobbs Act, the Attorney General in 1946 described the bill as "making it a Federal offense to interfere with or impede the free flow of interstate commerce *by robbery or extortion*." App., *infra*, 7a (Letter from the Attorney General to Hon. Paul H. Appleby, Acting Director, Bureau of the Budget (June 27, 1946) (emphasis added)). That view subsequently was reflected in official policy statements that guided criminal prosecutions by the United States under the Hobbs Act. A Department of Justice handbook issued in 1965 stated:

> The Hobbs Act requires that the prohibited impact upon commerce be effected by robbery, or extortion. In addition, the act makes a crime of the commission or the threatened commission of "physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section." However, *this language obviously relates back to a plan or purpose to rob or to extort.*

Department of Justice, *Handbook for Prosecution of Racketeers*, III(b)-(3) (Apr. 30, 1965) (emphasis added); accord 10 Department of Justice, *United States Attorneys' Manual* § 9-131.220, Ch. 131, 37 (May 8, 1984) (The Hobbs Act "does not

make criminal the act of obstructing commerce by actual or threatened violence in the absence of a purpose or plan to rob or extort."). And it remains the position of the United States that "[t]he statutory prohibition of 'physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section' is confined to violence for the purpose of committing robbery or extortion." Department of Justice, *Criminal Resource Manual* § 2402 (1997).

The United States is aware of only two reported attempts by federal prosecutors to advance the view that the Hobbs Act contains a free-standing prohibition against violence that affects interstate commerce. In both instances, the court of appeals summarily rejected the prosecutor's novel reading of the Act. *United States* v. *Yankowski*, 184 F.3d 1071 (9th Cir. 1999); *United States* v. *Franks*, *supra*. Indeed, in the Hobbs Act's 59-year history, the Hobbs Act apparently has never resulted in criminal punishment for physical violence that did not further an intended robbery or extortion. It is exceedingly "unlikely that if Congress had indeed wrought such a major expansion of federal criminal jurisdiction in enacting the Hobbs Act, its action would have so long passed unobserved." *United States* v. *Enmons*, 410 U.S. at 410.

II. RICO DOES NOT AUTHORIZE A PRIVATE CAUSE OF ACTION FOR INJUNCTIVE RELIEF

A. RICO's Text And Structure Vest Exclusive Authority In The Attorney General To Sue For Equitable Relief

RICO's civil remedies provision, 18 U.S.C. 1964, authorizes two causes of action: a public enforcement action for equitable relief by the Attorney General and a treble damages action by private parties. The Attorney General's right to sue for equitable relief derives from Section 1964(a) and (b), and those provisions, in combination, make the Attorney General's right exclusive.

1. Section 1964(a) grants district courts "jurisdiction to prevent and restrain violations" of RICO by issuing the full range of "appropriate orders" available to courts of equity. 18 U.S.C. 1964(a). Section 1964(a) does not identify who can seek such relief, but Section 1964(b) does. That provision states that "[t]he Attorney General may institute proceedings under this section" and that, "[p]ending final determination thereof," the court may enter interim restraining orders or take such other actions as it shall deem proper. 18 U.S.C. 1964(b).

By empowering the Attorney General to institute proceedings "under this section," Congress signaled its intent that the district court's equitable jurisdiction under Section 1964(a) must be invoked by the Attorney General. Congress further manifested its intent that the Attorney General alone may seek equitable relief by providing in subsection (b) that temporary equitable relief may be awarded "[p]ending final determination" of a proceeding instituted by the Attorney General for permanent equitable relief. There is no corresponding provision that authorizes a private party to institute proceedings "under this section" or to seek temporary equitable relief pending final disposition of a claim. Under Section 1964(a) and (b), therefore, the sole power to seek final and interim equitable relief against racketeering activities and enterprises is reposed in the Attorney General.

Rather than authorize private civil RICO plaintiffs to seek equitable remedies, Congress in Section 1964(c) granted private parties the right to bring suit to recover treble damages and attorney's fees. Section 1964(c) provides that "[a]ny person injured in his business or property by reason of a [RICO] violation * * * may sue * * * and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. 1964(c). That provision has been construed to authorize private parties, and not the government, to seek treble damages. *United States* v.

Bonanno, 879 F.2d 20, 22-24 (2d Cir. 1989) (reasoning that the United States is not a "person" under Section 1964(c)); see also *Sedima, S.P.R.I.* v. *Imrex Co.*, 473 U.S. 479, 487 (1985) (observing that Section 1964(c) creates "a private treble-damages action").

Section 1964's "inclusion of a single statutory reference to private plaintiffs, and the identification of a damages and fees remedy for such plaintiffs in [Section 1964(c)], logically carries the negative implication that *no other remedy* was intended to be conferred on private plaintiffs." *Religious Tech. Ctr.* v. *Wollersheim*, 796 F.2d 1076, 1083 (9th Cir. 1986), cert. denied, 479 U.S. 1103 (1987). Coupled with the fact that Congress in Section 1964(b) explicitly authorized the Attorney General to initiate proceedings to obtain equitable relief under Section 1964(a), but did not similarly grant private parties that right, the statute makes it clear that Congress did not authorize private parties to bring actions for equitable relief.

2. In concluding otherwise, the Seventh Circuit reasoned:

> Given that the government's authority to seek injunctions comes from the combination of the grant of a right of action to the Attorney General in § 1964(b) and the grant of district court authority to enter injunctions in § 1964(a), we see no reason not to conclude, by parity of reasoning, that private parties can also seek injunctions under the combination of grants in §§ 1964(a) and (c).

04-1244 Pet. App. 38a. That analysis is flawed, because Section 1964(c)'s grant of a private treble damages action is not parallel to Section 1964(b)'s grant of authority to the Attorney General to file an equitable action. As explained above, Section 1964(b) expressly grants the Attorney General the right to bring proceedings under "this section," an obvious cross-reference to the court's power to award equitable relief set

forth in the immediately preceding subsection (a). Section 1964(c), by contrast, is an independent, self-contained grant of a private right to recover treble damages. The provision contains no express or implied reference to, or incorporation of, Section 1964(a).

The court of appeals' interpretation is also undermined by its recognition (04-1244 Pet. App. 43a) that Section 1964(b) grants only the government the right to seek *preliminary* equitable relief. Under the court of appeals' reading of the statute, private parties may seek permanent injunctive relief but not preliminary relief pending final resolution of their claims. There is no reason, however, why Congress would have intended that highly anomalous result. Rather, the logical interpretation of the statute is that Congress created a symmetrical statutory scheme under which the Attorney General may seek temporary and final equitable relief, and private parties may seek treble damages.

B. A Comparison With The Antitrust Laws Shows That Congress Did Not Create A Private Injunctive Action

The statutory language that forms the closest antecedent for the private remedial provision in RICO is found in the antitrust laws. At a time when Congress had provided no express authority for private antitrust plaintiffs to seek equitable relief, the antitrust laws were construed to preclude such relief. The parallels between the antitrust laws at that time and the language of RICO support the same conclusion here —particularly since RICO lacks the explicit provision for private injunctive relief that Congress added to the antitrust laws. RICO's legislative history reveals that the statute's omission of authority for private RICO plaintiffs to seek equitable relief was deliberate.

1. As this Court has explained, "[a] treble-damages remedy for persons injured by antitrust violations was first pro-

vided in § 7 of the Sherman Act and was re-enacted in 1914 without substantial change as § 4 of the Clayton Act." *Pfizer, Inc.* v. *India*, 434 U.S. 308, 311 (1978); accord *Holmes* v. *Securities Investor Prot. Corp.*, 503 U.S. 258, 267 n.13 (1992); *Texas Indus., Inc.* v. *Radcliff Materials, Inc.*, 451 U.S. 630, 644 n.16 (1981).[2] Section 4 of the Sherman Act also authorized courts to issue equitable relief in actions brought by the United States. 26 Stat. 209-210.[3] This Court repeatedly recognized that those provisions of the Sherman Act did not authorize private parties to bring suit for injunctive relief.[4] Private parties were not authorized to seek injunctive relief for violations of the antitrust laws until Congress passed Section 16 of the Clayton Act (15 U.S.C. 26) *explicitly* authorizing such a right. *California* v. *American Stores Co.*, 495 U.S. 271, 287 (1990) ("§ 4 of the Sherman Act, which authorizes equita-

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[2] Section 7 of the Sherman Act provided that "[a]ny person who shall be injured in his business or property * * * by reason of anything forbidden or declared to be unlawful by this act[] may sue therefor * * * and shall recover three fold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee." 26 Stat. 210.

[3] Section 4 of the Sherman Act provided:

> The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. * * * [P]ending [a] petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises."

26 Stat. 209-210.

[4] *General Inv. Co.* v. *Lake Shore & Mich. S. Ry.*, 260 U.S. 261, 286 (1922); *Geddes* v. *Anaconda Copper Mining Co.*, 254 U.S. 590, 593 (1921); *Paine Lumber Co.* v. *Neal*, 244 U.S. 459, 471 (1917); *D.R. Wilder Mfg. Co.* v. *Corn Prods. Ref. Co.*, 236 U.S. 165, 174 (1915); *Minnesota* v. *Northern Sec. Co.*, 194 U.S. 48, 70-71 (1904).

ble relief in actions brought by the United States, was reenacted as § 15 of the Clayton Act, while § 16 filled a gap in the Sherman Act by authorizing equitable relief in private actions."); accord *General Inv. Co.* v. *Lake Shore & Mich. S. Ry.*, 260 U.S. 261, 287 (1922).

The Sherman Act thus "envisaged two classes of actions,—those made available only to the Government, * * * and, in addition, a right of action for treble damages granted to redress private injury." *United States* v. *Cooper Corp.*, 312 U.S. 600, 608 (1941) (holding that the United States may not recover treble damages under the Sherman Act). The Court reached that conclusion despite the fact "that there are no words of express exclusion of the right of individuals to act in the enforcement of the statute, or of courts generally to entertain complaints on that subject." *D.R. Wilder Mfg. Co.* v. *Corn Prods. Ref. Co.*, 236 U.S. 165, 174 (1915). The Court explained that "such exclusion must be implied * * * because of the familiar doctrine that 'where a statute creates a new offense and denounces the penalty, or gives a new right and declares the remedy, the punishment or the remedy can be only that which the statute prescribes.'" *Id.* at 174-175 (quoting *Farmers' & Mechs. Nat'l Bank* v. *Dearing*, 91 U.S. 29, 35 (1875)).[5]

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[5] For those reasons, respondents erred below in relying on courts' "inherent powers to issue injunctions" "absent the clearest congressional command to the contrary." Resp. C.A. Br. 39 (citing *Califano* v. *Yamasaki*, 442 U.S. 682, 705 (1979)). That presumption is inapplicable here, where Congress passed RICO against the backdrop of this Court's Sherman Act decisions that held that courts had no authority to award injunctive relief to private parties despite any "words of express exclusion" of that authority. *D.R. Wilder Mfg. Co.*, 236 U.S. at 174. In any event, the issue in this case is not whether courts have "*inherent* powers to issue injunctions." Section 1964(a) confers on district courts the *express* power to grant equitable relief, and that grant of authority encompasses the full range of equitable powers available to a court. See *Porter* v. *Warner Holding Co.*, 328 U.S. 395 (1946); *Mitchell* v. *Robert DeMario*

Although the Sherman Act authorizes suits in equity in one paragraph (Section 4), while RICO does so in two paragraphs (Section 1964(a) and (b)), the statutes are parallel in the critical respects here. First, both confer on courts "jurisdiction" to prevent and restrain violations through permanent and preliminary equitable relief, but expressly authorize only the Attorney General to seek such relief. Second, both provide private parties a separate right to recover treble damages and attorney's fees, but no other forms of relief. In light of this Court's precedents construing the Sherman Act, Congress is presumed to be aware when it enacted RICO that, absent inclusion of an *express* private right to obtain injunctive relief, the language it selected would be construed to exclude such a right. *Holmes*, 503 U.S. at 268 (construing the term "by reason of" in Section 1964(c) and observing that the Court "may fairly credit the 91st Congress, which enacted RICO, with knowing the interpretation federal courts had given the words earlier Congresses had used first in § 7 of the Sherman Act, and later in the Clayton Act's § 4").

Indeed, to authorize private antitrust plaintiffs to seek equitable relief, Congress enacted a separate section of the Clayton Act, Section 16. RICO, however, lacks any provision comparable to Section 16 of the Clayton Act. The court of appeals thus erred in suggesting that RICO in Section 1964 contains the same remedies as the Clayton Act, including Section 16. 04-1244 Pet. App. 42a-43a. Section 16 expressly provides that private persons "shall be entitled to sue for and have injunctive relief." 15 U.S.C. 26. Juxtaposed with Con-

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Jewelry, Inc., 361 U.S. 288 (1960); but see *United States* v. *Philip Morris USA, Inc.*, 396 F.3d 1190 (D.C. Cir. 2005) (denying availability of disgorgement under RICO), petition for cert. pending, No. 05-92 (filed July 18, 2005). RICO does not, however, confer standing on private parties to invoke such a power. Rather, Section 1964 gives only the Attorney General the authority to institute proceedings seeking equitable relief.

gress's explicit modeling of RICO's private treble damages provision "on the civil-action provision of the federal antitrust laws, § 4 of the Clayton Act," *Holmes*, 503 U.S. 267, the absence of a counterpart to Section 16 makes clear that Congress did not intend to create a private right to equitable relief under RICO.

2. The legislative history of RICO confirms that Congress made a deliberate choice in omitting authority for a private injunctive action. "The civil remedies in the bill passed by the Senate, S.30, were limited to injunctive actions by the United States and became §§ 1964(a), (b), and (d)." *Sedima*, 473 U.S. at 486-487; *Agency Holding Corp.* v. *Malley-Duff & Assoc.*, 483 U.S. 143, 152 (1987) (same). "During hearings on S. 30 before the House Judiciary Committee, Representative Steiger proposed the addition of a private-treble damages action" that was modeled after Section 4 of the Clayton Act. *Sedima*, 473 U.S. at 487. That amendment also would have authorized private parties to seek injunctive relief and the government to seek damages, as well as making other procedural changes. 116 Cong. Rec. 27,739 (1970). When the Judiciary Committee responded by passing only the private treble damages provision, Representative Steiger complained that the bill did "not do the whole job," since it "fail[ed] to provide * * * two important substantive remedies included in the Clayton Act: compensatory damages to the United States when it is injured in its business or property, and *equitable relief in suits brought by private citizens*." *Id.* at 35,227, 35,228 (emphasis added).

Representative Steiger subsequently offered another amendment, again to authorize a private injunctive action and a public damages action. *Sedima*, 473 U.S. at 487; 116 Cong. Rec. 35,228; *id.* at 35,346. Concerned about "the potential consequences that this new remedy might have," Representative Poff asked Representative Steiger to withdraw the

amendment for further study by the Judiciary Committee, and Representative Steiger agreed. *Agency Holding Corp.*, 483 U.S. at 154-155 (citing 116 Cong. Rec. at 35,346).

Shortly after RICO was enacted, Senators Hruska and McClellan, RICO's sponsors, introduced S. 16, a bill that again would have authorized damage actions by the United States and injunctive actions by private persons. *Agency Holding Corp.*, 483 U.S. at 155 ("[T]he purpose of [S. 16] was to broaden even further the remedies available under RICO. In particular, * * * it would have further permitted private actions for injunctive relief."). The Senate, but not the House, passed S. 16, and therefore it never became law. *Wollersheim*, 796 F.2d at 1086.

Congress thus passed RICO without authorizing private injunctive actions despite repeated attempts to do so, and despite Congress's explicit grant of such a right in Section 16 of the Clayton Act. Congress shortly thereafter rejected an amendment to RICO that would have added such a right. The clear conclusion to be drawn from the legislative history is that, consistent with RICO's text, Congress intended to create a private right of action only for treble damages.[6]

C. Policy Considerations Do Not Support A Private Right To Injunctive Relief Under RICO

The purposes underlying RICO are fully consistent with limiting equitable actions to suits brought by the Attorney General. RICO was designed "to provide new weapons of unprecedented scope for an assault on organized crime and its

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[6] The court of appeals erred in relying (see 04-1244 Pet. App. 39a-40a) on Congress's directive that RICO should be "liberally" construed. See Organized Crime Control Act of 1970, Pub. L. No. 91-452, Tit. IX, § 904(a), 84 Stat. 947. That provision cannot be invoked to overcome the text, structure, and legislative history of Section 1964, which affirmatively foreclose a private action for injunctive relief.

economic roots." *Russello* v. *United States*, 464 U.S. 16, 26 (1983). To eradicate that sustained criminal conduct, Congress expressly authorized district courts to enter wide-ranging equitable relief, including divestiture and corporate reorganization and dissolution. *United States* v. *Turkette*, 452 U.S. 576, 585 (1981). Corporate dissolution, however, is "a judgment of corporate death, which represent[s] the extreme rigor of the law." *California* v. *American Stores Co.*, 495 U.S. at 289 (internal quotation marks and ellipses omitted). It is therefore not surprising that Congress entrusted the Attorney General, acting with "official unity of initiative," with the exclusive authority to obtain such relief. *D.R. Wilder Mfg. Co.*, 236 U.S. at 174. As this Court explained in discussing the Sherman Act, Congress wanted to "confine the right to question the legal existence of a corporation * * * to public authority sanctioned by the sense of public responsibility and not to leave it to individual action prompted it may be by purely selfish motives." *Id.* at 176.

It is neither necessary nor appropriate to construe RICO implicitly to place those same remedies in private hands. Congress explicitly authorized a private right of action for damages under RICO and provided for a treble damages remedy as a deterrent against future harm. In particular contexts when Congress has wished to go further and authorize private injunctive relief for a new statutory right, it has so provided. For instance, although the conduct at issue here pre-dates the Freedom of Access to Clinic Entrances Act of 1994, Pub. L. No. 103-259, § 3, 108 Stat. 694, that Act expressly provides for suits by private persons to obtain temporary and permanent injunctive relief against threats or acts of force that interfere with the obtaining or providing of abortion services. 18 U.S.C. 248(a) and (c)(1)(B).

CONCLUSION

The judgment of the court of appeals remanding the case to the trial court should be reversed.

Respectfully submitted.

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SEPTEMBER 2005

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* The Solicitor General is recused in this case.

APPENDIX A

June 27, 1946

Honorable Paul H. Appleby
Acting Director
Bureau of the Budget
Washington, D.C.

My dear Mr. Appleby:

In compliance with your request of June 24, 1946, I have examined the facsimile of the bill (H.R. 32) which is before you in enrolled form. "To amend the Act entitled 'An Act to protect trade and commerce against interference by violence, threats, coercion, or intimidation', approved June 18, 1934."

Under existing law (18 U.S.C. 420a-420e), it is a criminal offense for any person, in connection with or in relation to any act which, in any way or degree, affects trade or commerce or any article or commodity moving or about to move in trade or commerce (1) to obtain or attempt to obtain the payment of money or other valuable consideration or the purchase or rental of property or protective services by the use of or the threat to use force, violence or coercion; or (2) to obtain the property of another with his consent, induced by wrongful use of force or fear or under color of official right; or (3) to commit or threaten to commit an act of physical violence to a person or property in furtherance of a plan or purpose to violate any of the foregoing prohibitions. It is expressly provided that the terms "property," "money," or "valuable consideration" shall not be deemed to include wages paid by a bona fide employer to a bona fide employee.

The penalty provided by existing law is imprisonment for a period of from one to ten years or a fine of $10,000, or both. Prosecutions under existing law may be had only upon the express direction of the Attorney General and in any district in which any part of the offense has been committed.

In the case of *United States* v. *Local 807*, 315 U.S. 521, the foregoing Act was considered by the Supreme Court. The Court stated the following to be the facts involved in that case: That the defendant included in its membership nearly all of the motor truck drivers and helpers in the City of New York; that large quantities of merchandise which went into the City from neighboring States had been transported in trucks manned by drivers and helpers who resided in the localities from which the shipments were made and who were not members of Local 807; that it had formerly been the practice of these out-of-state drivers to make deliveries to the warehouses of consignees in New York City and to pick up other merchandise from New York shippers for delivery on the return trip to consignees in surrounding States; that the defendant conspired to use, and did use, violence and threats to obtain from the owners of these trucks certain sums of money for each truck entering the City; that the amounts so obtained were the regular union rates for a day's work of driving and unloading; that in some cases the out-of-state driver was compelled to drive the truck to a point close to the city limits, and then to turn it over to one of more of the defendant's members, who would then drive the truck to its destination, do the unloading, pick up the merchandise for the return trip and surrender the truck to the out-of-state driver at the point where they had taken it over; that in other cases money was demanded and obtained from the owners, or drivers who rejected offers of the defendant's members to do, or help with, the driving or unloading; and that in other cases the defendant's members

after receiving the money either failed to offer to work or refused to work when asked to do so by the owners or out-of-state drivers.

The Court held that as the result of the provision excluding "the payment of wages by a bona fide employer to a bona fide employee" contained therein, existing law did not apply to the foregoing situation, since it merely involved the use or threat of violence by the defendant for the purpose of obtaining the opportunity to work for money or for the purpose of obtaining money even though the employers refused to permit the defendant to work. The Court in so holding cited as an analogy in support of its position the use of stand-by musicians, which it said was a well known labor practice. The Court, in holding that the activities involved in the case were among those practices of labor unions which did not fall within the ban of the Anti-Racketeering Act, stated that "This does not mean that such activities are beyond the reach of Federal legislative control."

According to the report of the House Committee on the Judiciary concerning this legislation (H. Rept. 238, 79th Cong.), the bill under consideration was introduced to counteract the effect of the foregoing decision. The bill repeals existing law and provides a substitute therefor. It makes it a criminal offense punishable by imprisonment for not more than 20 years or a fine of not more than $10,000, or both, to obstruct, delay or affect commerce, or the movement of any article or commodity in commerce by robbery or extortion. (Secs. 2, 6.)

The term "robbery" is defined as the unlawful taking or obtaining of personal property from another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or to property in his custody or possession, or to the person or property of a relative or a member of his family or to anyone

in his company. (Sec. 1(b).) The term "extortion" is defined as the obtaining of property from another with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right. (Sec. 1(c).)

The exception provided in existing law for the payment of wages by a bona fide employer to a bona fide employee is repealed as is the prohibition against the commencing of prosecutions without the express direction of the Attorney General. Conspiracies, attempts and acts in furtherance of a plan or purpose to do anything prohibited by the legislation are also made unlawful. (Secs. 3-5.)

Title II of the bill expressly states that nothing in the Act shall be construed to repeal, modify or affect sections 6 and 20 of the Clayton Act (15 U.S.C. 17 and 29 U.S.C. 52), the Norris-LaGuardia Act (29 U.S.C. 101-115), the Railway Labor Act (45 U.S.C. 151-188), or the National Labor Relations Act (29 U.S.C. 151-166).

An almost identical bill (H.R. 653) was introduced in the Seventh-eighth Congress. Title I of that bill was identical with Title I of the bill under consideration. Title II of the earlier bill related to the willful obstruction by force, or threats of force, of the transportation of troops, munitions or war supplies during World War II. The provisions contained in Title II of the bill under consideration were contained in a proviso to Title II of the earlier bill.

After the bill in the Seventy-eighth Congress was reported by the House Judiciary Committee, Chairman Sumners of that Committee filed a supplemental report (H. Rept. 66, Part 2, 78th Cong.) in which he proposed an amendment making the proviso in Title II a separate title, so that it would clearly by applicable to the entire measure. In that supplemental report, Chairman Sunmers stated as follows:

"It is considered by the committee that the provisions of title I were not intended to prevent the doing of acts authorized under the above-mentioned statutes but in order to remove any question the committee has agreed to the hereafter-mentioned amendment, which is additional to the committee amendment contained in the original report and recommended therein. The proposed additional amendment is not intended to be interpreted as authorizing any unlawful acts, particularly those amounting to robbery or extortion. The need for the legislation was emphasized by the opinion of the Supreme Court in the case of *United States* v. *Local 807* (315 U.S. 521)."

That amendment, which is identical with Title II of the bill under consideration was adopted and the bill was passed by the House of Representatives on April 9, 1943.

When the bill under consideration was introduced in the Seventy-ninth Congress it contained three titles and was identical with the earlier bill (H.R. 653) as it was passed by the House of Representatives in the Seventy-eighth Congress. Title II of the bill as introduced was stricken from the legislation when the bill was passed by the House of Representatives on December 12, 1945, because the need for it had ceased to exist, since it was intended to be limited to the period of World War II. Title III of the bill became Title II. (91 Cong. Rec. 12102.)

While the bill under consideration was being debated in the House of Representatives considerable discussion was devoted to the effect of Title II. Congressman Hobbs, the author of the bill, made the following observations (91 Cong. Rec. 12085):

"Title III of the bill (now Title II) exempts from the operation of this law any conduct under the antitrust

statutes, under the NLRB Act, under the Norris-LaGuardia statute, the Railway Labor Act, the Big Four that have been termed the Magna Carta of labor. * * *

"Let me point out that when you are striking, when you are picketing, when you are organizing a labor union, or engaging in any legitimate labor function, then you are operating under some one of those four laws that are specifically exempted in this bill by title III (now Title II). Aside from that there is absolutely nothing farther from the mind of any proponent of this bill than to hurt labor. Did we amend this bill when the Teamsters' Union struck in Washington? Not at all, no matter how much it hurt. It was not highway robbery. They were exercising their legitimate right to strike. The same thing is true of all the other legitimate activities of Labor, and I resent just as bitterly as you or anybody else does the aspersion cast upon organized labor that robbery and extortion are legitimate activities of organized labor."

Congressman Hobbs further remarked that representatives of organized labor appeared before the House Committee on the Judiciary, of which he is a member, and stated that organized labor would have no objection to the enactment of a bill outlawing robbery or extortion in interstate commerce provided the bill preserved the rights of labor "under the four branches of labor's Magna Carta." (91 Cong. Rec. 12096.)

In view, therefore, of the express language of Title II of the bill and the above-mentioned legislative history, it seems clear that the measure will not interfere with labor's right to strike and picket peacefully or to take any other legitimate and peaceful concerted action. Moreover, since the Federal Government is charged by the Constitution with the duty of

regulating commerce among the states, it does not appear inappropriate for the Congress to enact legislation making it a Federal offense to interfere with or impede the free flow of interstate commerce by robbery or extortion.

In view of the foregoing, I find no objection to the approval of the bill.

Sincerely yours,

Attorney General

APPENDIX B

1. Section 1951, of Title 18, U.S.C., provides in relevant part:

§ 1951. Interference with commerce by threats or violence

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

(b) As used in this section—

(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and

all other commerce over which the United States has jurisdiction.

* * * * *

2. Section 1964, of Title 18, U.S.C., provides in relevant part:

§ 1964 Civil remedies

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of Section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of Section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that

no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of Section 1962.

* * * * *